

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HOLLIE CUROLE,

Plaintiff

v.

BURGER KING CORP., *et al.*,

Defendant

2:15-cv-01639-JAD-CWH

**Order Denying Plaintiff's Motion to
Remand**

[ECF 9]

Plaintiff Hollie Curole sues Burger King Corp. and one of its employees, Taryn Barnes, for injuries that Curole allegedly sustained as a passenger in a car accident between Curole's vehicle and one that Barnes was driving as part of her employee duties.¹ Burger King removed the case from state court based on diversity of citizenship.² Both defendants later sued Anthony Ramos, the driver of Curole's vehicle during the accident, as a third-party defendant.³ Curole now moves to remand, arguing that complete diversity is lacking because Barnes was—and Ramos is—a Nevada citizen.⁴ I deny Curole's motion because Barnes was a California citizen at the time that Curole filed suit, and a defendant's decision to sue a third-party defendant does not affect federal-court jurisdiction over claims between original parties.

Background

Burger King claims diversity under 28 U.S.C. § 1332 as the basis of federal subject-matter jurisdiction over this case.⁵ Curole alleges that she resides in Clark County, Nevada.⁶

¹ ECF 9 at 2.

² ECF 1.

³ ECF 2; ECF 17.

⁴ ECF 9 at 4.

⁵ ECF 1 at 2.

⁶ *Id.* at 6.

1 Burger King purports to be a Florida corporation with its principal place of business in Florida.⁷
 2 Barnes alleges that she resides in California;⁸ however, Curole claims that Barnes is actually a
 3 Nevada resident, citing the traffic-collision report from the accident.⁹ Curole argues that the
 4 report “clearly demonstrates that Ms. Barnes was a Nevada resident and ‘citizen’” at the time of
 5 the accident.¹⁰ The report does list a Nevada address for Barnes.¹¹ Finally, Ramos alleges that he
 6 is a Nevada resident.¹²

7 Curole moves to remand this case to state court, arguing that Burger King’s removal of
 8 the case was defective and that Barnes’s alleged Nevada residency at the time of the accident, as
 9 well as Ramos’s current Nevada residency, destroys complete diversity.

10 Discussion

11 A defendant may remove a suit from state to federal court based on diversity of
 12 citizenship.¹³ Under 28 U.S.C. § 1332(a)(1), “[t]he district courts shall have original jurisdiction
 13 of all civil actions where the matter in controversy exceeds the sum or value of \$75,000,
 14 exclusive of interest and costs, and is between citizens of different states.” “For a case to qualify
 15 for federal jurisdiction under 28 U.S.C. § 1332(a), there must be complete diversity of citizenship
 16 between the parties opposed in interest.”¹⁴ Citizenship is based on an individual’s domicile—“a
 17 location where he or she has established a fixed habitation or abode in a particular place, and
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 20 ⁷ *Id.* at 2.

21 ⁸ ECF 17 at 6.

22 ⁹ ECF 9 at 4.

23 ¹⁰ *Id.*

24 ¹¹ *See* ECF 9-1 at 4.

25 ¹² ECF 28-1 at 3.

26 ¹³ 28 U.S.C. § 1441.

27 ¹⁴ *Kuntz v. Lamar Corp.*, 385 F.3d 1177, 1181 (9th Cir. 2004) (citing *Strawbridge v. Curtiss*, 7
 28 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806)).

intends to remain there permanently or indefinitely.”¹⁵ “[T]he existence of domicile for purposes of diversity is determined as of the time the lawsuit is filed.”¹⁶

“Federal courts are courts of limited jurisdiction.”¹⁷ There is a strong presumption against removal jurisdiction, and “federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”¹⁸ Therefore, the defendant always has the burden of establishing that removal is proper.¹⁹ If the court finds that the parties to the suit are not diverse, it should remand the case to state court under 28 U.S.C. § 1447(c).

Curole first contends that Burger King made a “fatal flaw” in its notice of removal by “only alleg[ing] residency of Ms. Barnes and fail[ing] to allege citizenship.”²⁰ Curole cites non-binding case law to support her proposition that Burger King’s choice of words (i.e., that Barnes is a “resident” rather than a “citizen” of California) renders the removal defective.²¹ I need not reach the legal merits of this argument because it is factually inaccurate. Along with its notice of removal, Burger King filed a “statement concerning removal” that explicitly asserts that Barnes “is a citizen of the State of California.”²² This argument is therefore baseless.

Curole next argues that Barnes “was a Nevada citizen at the time of the subject motor vehicle crash that also occurred in Nevada.”²³ As Burger King correctly responds, diversity is based on a defendant’s domicile at the time the plaintiff files suit, rather than when a controversy

¹⁵ *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (internal quotation marks and brackets omitted).

¹⁶ *Id.*

¹⁷ *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

¹⁸ *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992).

¹⁹ *Id.*

²⁰ ECF 9 at 3–4.

²¹ *Id.* (citing *Nasco, Inc. v. Norsworthy*, 785 F. Supp. 707 (M.D. Tenn. 1992)).

²² ECF 3 at 2.

²³ ECF 9 at 4.

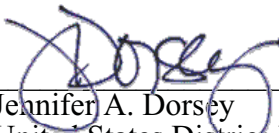
arises.²⁴ Barnes's possible Nevada residency at the time of the car accident is therefore irrelevant in assessing the parties' diversity. Instead, Burger King asserts that Barnes was a California citizen at the time Curole filed suit, and it provides a copy of Barnes's California driver's license, issued months before this suit commenced, and an auto-insurance bill addressed to Barnes at a California address.²⁵ Based on this evidence, I am satisfied that Barnes was domiciled in California when Curole filed suit. Because neither defendant is domiciled in Nevada, complete diversity exists.

Finally, Curole briefly argues that the inclusion of third-party defendant Ramos,²⁶ an alleged Nevada citizen, also destroys diversity. This argument fails because diversity is required between "parties opposed in interest."²⁷ An impleaded third-party defendant is not adverse to the original plaintiff and therefore does not affect the diversity between the original parties.²⁸

Conclusion

Accordingly, IT IS HEREBY ORDERED that Curole's Motion to Remand [ECF 9] is **DENIED**.

Dated: January 26, 2016.


 Jennifer A. Dorsey
 United States District Judge

²⁴ *Strotek Corp. v. Air Transp. Assn. of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002); *Lew*, 797 F.2d at 749.

²⁵ ECF 15 at Ex. A, Ex. B.

²⁶ Burger King and Barnes impleaded Ramos under FRCP 14. ECF 2; EFC 17.

²⁷ *Kuntz*, 385 F.3d at 1181.

²⁸ *Spring City Corp. v. Am. Bldgs. Co.*, 193 F.3d 165, 169 (3d Cir. 1999).